



Department of Law
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MEMORANDUM

TO: Anita Martin, Executive Director
Georgia Board of Dentistry

FROM: Reagan W. Dean
Assistant Attorney General

RE: Botox Injections Within the Scope of Dentistry

The Board has requested advice from the Attorney General's Office concerning whether the giving of botox injections by dentists is within the scope of dentistry.

A. Information about Botox

Part of this advice includes this Office's understanding of what the term "botox" means. Various websites have been reviewed, including that of Allergan, Inc. which markets this product. It has been learned that botox is the name given for botulinum toxic type A (made from bacteria that causes botulism food poisoning). Botox therapy has been described as the injection of an extremely diluted, purified form of botulinum toxin type A into specific muscles. Such injection causes a localized and temporary paralysis of those muscles and prevents them from contracting.

"Botox" is the trade name under which the pharmaceutical company Allergan, Inc. markets this toxin. In 1989, the FDA gave approval to use botox for treating crossed eyes (strabismus) and uncontrollable blinking (blepharospasm). In 2000 the FDA approved botox for treatment of cervical dystonia in adults to decrease the severity of abnormal head position and associated neck pain. In 2002, the FDA gave approval for use of botox to temporarily improve the appearance of moderate to severe lines between the eyebrows. There are studies underway to determine if botox is appropriate for treatment of many

types of complaints, such as migraine, fibromyalgia, chronic back pain, and overly sweaty armpits.

While botox has been approved by the FDA only for wrinkles between the brows, botox injections have been used on other spots, including horizontal lines on the forehead, crow's feet, lower eyelids, and lines on the side of the nose and upper lip. Information has been received that at least one group has presented seminars in which dentists will be trained to give botox injections. The advertised basis for giving such injections is assisting the elimination of patients' pain in the head, neck, and face. However, the loss of facial wrinkles is a side benefit that it contends will encourage patients to seek such treatment. It does not take much insight to arrive at the opinion that the actual purpose is to encourage dentists to cosmetically treat facial wrinkles in their patients, with the pain elimination claim simply being a guise to justify such treatment.

B. Scope of Practice of Dentistry

The Board received a request from the Georgia Dental Association (GDA) concerning botox injections. The GDA has been contacted by dentists who inquired whether giving botox injections is within the scope of the practice of dentistry.

The Georgia Legislature has codified the statutes concerning dentistry in Chapter 11, Title 43 of the Official Code of Georgia. O.C.G.A. §43-11-1(5) defines the term "dentistry" as:

"(5) 'Dentistry' means the evaluation, diagnosis, prevention, or treatment, or any combination thereof, whether using surgical or nonsurgical procedures, of diseases, disorders, or conditions, or any combination thereof, of the oral cavity, maxillofacial area, or the adjacent and associated structures, or any combination thereof, and their impact on the human body provided by a dentist, within the scope of his or her education, training, and experience, in accordance with the ethics of the profession and applicable law, including, but not limited to, the acts specified in Code Section 43-11-17."

O.C.G.A. §43-11-17, sets forth those acts which constitute the practice of dentistry as follows:

"(a) Except as expressly provided in this chapter, any person who performs any of the following procedures, operations, or services shall be regarded as practicing dentistry within the meaning of this chapter:

(1) Operates or performs part of any dental operation of any kind upon the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures for the treatment of diseases or lesions of such structures;

(2) Extracts teeth or attempts to correct a malposition thereof;

(3) Fills or crowns a human tooth or teeth;

(4) Does any dental operation whatsoever on the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures;

(5) Examines any human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures or takes an impression thereof for the purpose of diagnosing, treating, or operating upon the same;

(6) Supplies, makes, fits, repairs, adjusts, or relines, directly for or to an ultimate user of the product in the State of Georgia, any appliance, cap, covering, prosthesis, or cosmetic covering, as defined by rules and regulations established by the board, usable on or as human teeth unless such provision, production, fit, repair, adjustment, or reline of such product is ordered by and returned to a licensed dentist or unless such product is used solely for theatrical

purposes as defined by rules and regulations established by the board.

(7) Undertakes to do or perform any physical evaluation of a patient in his or her office or in a hospital, clinic, or other medical or dental facility prior to, incident to, and appropriate to the performance of any dental services or oral or maxillofacial surgery;

(8) Diagnoses dental radiographs or makes radiographs except for use by a licensed dentist or a licensed physician; or

(9) By any means whatsoever makes it known, implies, or holds out to the public in any fashion that such person will do any of the operations, procedures, or services set forth in this subsection.

(b) Proof of any one or all of the acts mentioned this Code section shall constitute prima-facie evidence of the practice of dentistry."

C. Injections of Botox Not Included in Acts Constituting the Practice of Dentistry

The acts constituting the practice of dentistry in O.C.G.A. §43-11-17 do not include giving injections of botox. Most of the subsections in that statute clearly do not involve injections of botox: subsection (2) extracts teeth or attempts to correct a malposition of teeth; subsection (3) fills or crowns a human tooth or teeth; subsection (5) examines or takes an impression of the oral cavity or teeth or other structures; subsection (6) supplies, makes, fits, repairs, adjusts, or relines any appliance, cap, covering, prosthesis, or cosmetic covering usable on or as human teeth; subsection (7) performs any physical evaluation of a patient appropriate to the performance of any dental services or oral or maxillofacial surgery; and subsection (8) diagnoses dental radiographs.

O.C.G.A. §43-11-17(1) concerns the act of "operates or performs part of any dental operation of any kind upon the human oral cavity, teeth, ... maxilla, mandible or associated structure, or associated

contiguous masticatory structures, for the treatment of diseases or lesions of such structures." This subsection concerns dental operations upon the described structures. The purpose of such dental operations is for the treatment of diseases or lesions.

O.C.G.A. §43-11-17(4) states that the practice of dentistry includes any dental operation whatsoever on the human oral cavity, teeth, maxilla, mandible or associated structures, or associated contiguous masticatory structures. Again, this subsection involves a "dental operation" upon such structures.

The acts constituting the practice of dentistry were reviewed in the case of Brown v. Belinfante, 252 Ga. App. 856, 859 (2001), in which the Court of Appeals examined whether cosmetic surgery performed by a dentist was within the scope of dentistry. The Court there held:

"O.C.G.A. §43-11-17 does not expressly list any of the cosmetic procedures that Belinfante performed, and we must regard the omission as deliberate. Only paragraphs (1) and (4) of subsection (a) even arguably could be interpreted as including the procedures. But subsection (a)(1) requires that the 'dental operation' be related to the 'treatment of diseases or lesions,' and it is undisputed that the cosmetic procedures here were elective and treated no diseases and no lesions. We next focus on subsection (a)(4) and consider whether the legislature, by using the phrase 'dental operation ... on the human oral cavity, teeth, gingiva, alveolar process, maxilla, mandible or associated structures, or associated contiguous masticatory structures,' intended to include within the practice of dentistry elective facelifts, chin augmentations, eyelid revisions, and facial laser treatments. First, the Georgia Legislature limited the types of procedures encompassed by that subsection to those 'dental' in nature. Dorland's Illustrated Medical Dictionary (28th ed.) defines 'dental' as 'pertaining to a tooth or teeth.' Second, only the term 'associated structures' needs further interpretation, as it is readily apparent that the other terms do not encompass the facial components at issue here. And a longstanding rule of construction provides 'that a general term following specific terms is confined to the same kind or category of thing.'

The human body parts specifically enumerated in O.C.G.A. § 43-11-17(a)(4) pertain to the teeth, further demonstrating that the legislature intended to so limit the practice of dentistry. [footnotes omitted.]"

Absent from the list of acts constituting the practice of dentistry is the giving of injections of botox. As stated in Brown v. Belinfante, *supra*, the absence of such procedure from the list of acts must be regarded as deliberate.

Further, the term "dental operation" was examined by the Court of Appeals in that case. The Court of Appeals recognized that "dental operation" means pertaining to a tooth or teeth.

This Office has received a copy of an advertisement from a group which gives seminars instructing dentists how to give botox injections. The advertisement claims the injections are to assist patients in eliminating head, neck, and facial pain. However, the underlying purpose is to improve the cosmetic appearances of patients' faces as a beneficial side-effect of the pain treatment, thereby encouraging desire for such treatment.

The Georgia Legislature has also enacted legislation concerning the practice of medicine in Chapter 34 of Title 43. In O.C.G.A. §43-34-20(3), the legislature has defined the term "to practice medicine", in part, as follows:

"(3) 'To practice medicine' means to hold oneself out to the public as being engaged in the diagnosis or treatment of disease, defects, or injuries of human beings; or the suggestion, recommendation, or prescribing of any form of treatment for the intended palliation, relief, or cure of any physical, mental, or functional ailment or defect of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift, or compensation whatsoever;..."

The practice of dentistry is statutorily a limited license to practice medicine. 1989 Op. Att'y Gen. 89-49. The advertised purpose of botox injections is to assist in eliminating patients' head, neck, or facial pain. Such purported purpose does not fall within the acts

which constitute the practice of dentistry. See, Brown v. Belifante, supra. Such treatment of pain in the head, neck, or face by injections of botox would fall within the practice of medicine. Nor does the underlying purpose of the injections, cosmetic skin treatment, fall within the acts that constitute the practice of dentistry. Treatment of perceived defects in the skin of patients by injections of botox would fall within the practice of medicine.

Also, although the definition of "dentistry" includes the prevention or treatment of disorders or conditions of the maxillofacial area, or the adjacent and associated structures, the definition should be read in conjunction with the acts that the Legislature has set forth as actually constituting "dentistry", which acts do not include giving botox injections for elimination of pain in the head, neck, or face or for cosmetic skin appearance purposes. It should not be read as giving carte blanche to any treatment that may affect the head, neck, or face. For example, the treatment of acne or other facial skin disorders in the maxillofacial area would not fall within the practice of dentistry, nor is facial wrinkle removal included in such acts constituting dentistry.

The underlying purpose of botox injections is to treat perceived defects in the human face. While cosmetic in nature, injections of botox are given to change or alter the human face to treat the perceived defects. The giving of injections of botox to the human face falls within the definition of medicine. It does not fall within the scope of the practice of dentistry nor does the Board have the legal authority to expand the scope of practice to include it. See, Brown v. Belinfante, supra, at p. 858:

"Although the General Assembly charged the Georgia Board of Dentistry with duties 'relative to the protection of the public health and the control and regulation of the practice of dentistry', the Board is without authority to expand the scope of the practice of dentistry beyond its statutory limits."
(footnotes omitted)

The practice of dentistry is statutorily enacted by the Legislature. The Board does not have authority to expand that statutory definition of the practice of dentistry. The statutory limits placed upon the practice of dentistry can only be changed by the legislature. Foster v. Georgia Board of Chiropractic Examiners, 257 Ga. 409, 420 (1987).

D. Conclusion

The scope of dentistry has been statutorily determined by the Legislature. A dentist may perform those acts set forth in O.C.G.A. §43-11-17. A dentist performing a dental operation may perform those procedures which are necessary or incidental to the proper performance of such operation. However, a dentist is not authorized to perform procedures, such as botox injections, which are not incidental to the performance of a dental operation.

The advertised purpose of botox injections for pain elimination in the head, neck, or facial areas, not incidental to the performance of a dental operation, would not fall within the scope of dentistry. Also, the underlying purpose of such injections, i.e. facial wrinkle removal for cosmetic appearances, not incidental to the performance of a dental operation, would not fall within the scope of dentistry.

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